

**ANNUAL REPORT**  
of the  
**U. S. COURT OF MILITARY APPEALS**



and the  
**JUDGE ADVOCATES GENERAL**  
of the  
**ARMED FORCES**  
and the  
**GENERAL COUNSEL**  
of the  
**DEPARTMENT OF TRANSPORTATION**

**PURSUANT TO THE**  
**UNIFORM CODE OF MILITARY JUSTICE**  
**For the Period**  
**January 1, 1975–December 31, 1975**

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**ANNUAL REPORT**  
SUBMITTED TO THE  
**COMMITTEES ON ARMED SERVICES**  
of the  
**SENATE AND OF THE**  
**HOUSE OF REPRESENTATIVES**  
and to the  
**SECRETARY OF DEFENSE**  
**AND SECRETARY OF TRANSPORTATION**  
and the  
**SECRETARIES OF THE DEPARTMENTS OF THE**  
**ARMY, NAVY, AND AIR FORCE**

**PURSUANT TO THE**  
**UNIFORM CODE OF MILITARY JUSTICE**

**For the Period**  
**January 1, 1975-December 31, 1975**



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AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES  
AND THE GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION**

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**JOINT REPORT**  
**of the**  
**UNITED STATES COURT OF MILITARY APPEALS**  
**and the**  
**JUDGE ADVOCATES GENERAL**  
**OF THE ARMED FORCES**  
**and the**  
**GENERAL COUNSEL**  
**DEPARTMENT OF TRANSPORTATION**  
**January 1, 1975–December 31, 1975**

As required by Article 67(g), Uniform Code of Military Justice, the Judges of the United States Court of Military Appeals, the Judge Advocates General of the military departments, and the General Counsel of the Department of Transportation, constituting the Code Committee, submit their annual report on the operation of the Uniform Code of Military Justice to the Committees on Armed Services of the United States Senate and House of Representatives and to the Secretaries of Defense, Transportation, Army, Navy, and Air Force.

During the year, the Joint Service Committee on Military Justice, a standing committee composed of representatives of each of the services, continued its work on proposed changes to the Uniform Code of Military Justice. This Committee's proposals, and other proposals, were discussed at meetings of the Code Committee in July and October. Work continues on proposals for changes to the Uniform Code.

Exhibit A shows the number of courts-martial during various stages of the military justice process during fiscal year 1975. The number of courts-martial tried during the fiscal year decreased by 6,585 from fiscal year 1974. The number of cases reviewed by each of the Courts of Military Review in fiscal year 1975 increased over those reviewed in the previous fiscal year. While the number of cases

reviewed by the Air Force Court of Military Review more than doubled, the number reviewed by the Navy Court of Military Review increased by approximately 30 percent and the number reviewed by the Army Court of Military Review increased by approximately 45 percent.

A marked increase occurred in the number of cases reviewed by the United States Court of Military Appeals in fiscal year 1975 compared with fiscal year 1974. The caseload went from 1,417 in fiscal year 1974 to 2,179 in fiscal year 1975. All of the services showed an increase in the number of cases being reviewed by the Court of Military Appeals, the Army and the Navy showing the most significant increases.

The separate reports of the United States Court of Military Appeals and of The Judge Advocates General of the various services, which are included with this report, further expand upon the operation of the Uniform Code of Military Justice during the past year.

Respectfully submitted,

**ALBERT B. FLETCHER, JR.,**  
*Chief Judge*

**WILLIAM H. COOK,**  
*Associate Judge*

**HOMER FERGUSON,**  
*Senior Judge*

**WILTON B. PERSONS, JR.,**  
*The Judge Advocate General*  
*United States Army*

**H. B. ROBERTSON, JR.,**  
*The Judge Advocate General*  
*United States Navy*

**HAROLD R. VAGUE,**  
*The Judge Advocate General*  
*United States Air Force*

**JOHN H. ELY,**  
*General Counsel*  
*Department of Transportation*



## EXHIBIT A

For The Period  
July 1, 1974 to June 30, 1975

	<i>FY 1975</i>
Army .....	16,278
Navy .....	22,755
Air Force.....	1,740
Coast Guard .....	460
	<hr/>
TOTAL.....	41,233

*Cases Reviewed by Courts of Military Review*

	<i>FY 1975</i>
Army .....	3,064
Navy .....	3,346
Air Force.....	1,443
Coast Guard .....	19
	<hr/>
TOTAL.....	7,872

*Cases Docketed with U.S. Court of Military Appeals*

	<i>FY 1975</i>
Army .....	1,141
Navy .....	492
Air Force.....	283
Coast Guard .....	3
	<hr/>
TOTAL.....	1,919



**Report of the**  
**UNITED STATES COURT OF MILITARY APPEALS**  
**January 1, 1975 to December 31, 1975**

The Judges of the United States Court of Military Appeals submit their report on the administration of the Court and of military justice to the Committees on Armed Services of the United States Senate and House of Representatives and to the Secretaries of Defense, Transportation, Army, Navy, and Air Force, in accordance with the Uniform Code of Military Justice, Article 67(g), 10 U.S.C. § 867(g).

The Court's personnel and, indeed, everyone connected with military justice were saddened by the death of Judge Robert E. Quinn on May 19, 1975. Judge Quinn had served this Court honorably from its inception until shortly before his death, for many years as Chief Judge.

Albert B. Fletcher, Jr., of Kansas, was nominated by President Ford on March 13, 1975, as a Judge of this Court to fill the unexpired term of Chief Judge Robert M. Duncan, for the term expiring on May 1, 1986. He was confirmed by the Senate on April 14, 1975, appointed Chief Judge by President Ford on April 16, 1975, and took the oath of office on April 30, 1975.

Matthew J. Perry, of South Carolina, was nominated by President Ford on December 10, 1975, to fill the unexpired term of Judge Robert E. Quinn, said term to expire on May 1, 1981. He was confirmed by the Senate on December 19, 1975, and took the oath of office on February 18, 1976.

This Court saw a significant increase in its caseload during 1975. While 1,250 petitions for grant of review were docketed in 1974, 2,116 were docketed in 1975. Of these cases, 86 petitions were granted in 1974 and 378 were granted in 1975. In addition, the Judge Advocates General certified 15 cases to the Court in 1974 and 26 in 1975. The Court issued 89 opinions in 1974 and 144 in 1975. The caseload in the extraordinary writs area decreased slightly between 1974 and 1975, 99 petitions for extraordinary relief being filed in 1974 and 89 being filed in 1975.<sup>1</sup>

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<sup>1</sup>For additional statistics, see Appendix A.

During 1975, 769 attorneys were admitted to the Court's bar. In addition, special sessions of the Court were held at the Naval Station, San Diego, California; The Judge Advocate General's School U.S. Army, Charlottesville, Virginia; the Marine Corps Base, Camp Pendleton, California; and the Naval Post Graduate School, Monterey, California.

The Court was very active in all areas of criminal law during 1975, being presented with an extremely wide range of issues not normally presented to an appellate court in such a short period of time. Considering only criminal law matters, the Court recognizes that other courts may look to it for guidance in all matters relating to criminal law. This factor, plus the necessity for the Court to often weigh the needs of the uniformed services in considering matters of justice, place the Court in a unique position in American jurisprudence.

Of particular significance, perhaps, in the case law area, are four areas: (1) following the guidance of the United States Supreme Court in *Gerstein v. Pugh*, 420 US 103 (1975), the Court held that a neutral and detached person must be involved in the decision to place a member of the military in pretrial confinement;<sup>2</sup> (2) the Court also placed more responsibility upon the trial judge to insure that an accused receives a fair trial;<sup>3</sup> (3) on a number of occasions, the Court was concerned with the ethical conduct of counsel appearing before courts-martial and of counsel working elsewhere in the military justice system;<sup>4</sup> and (4) the Court has often been called upon to examine the relationship between the Uniform Code of Military Justice and the Manual for Courts-Martial.<sup>5</sup>

The Court has also been concerned, on numerous occasions, with the applicability of the Uniform Code of Military Justice—by its very title a uniform code for all services—to the various uniformed services that may often have varying needs and problems. The Court has frequently sought amicus curiae briefs from services other than one that is an immediate party to a case and has also frequently invited participation in a case by divisions of a Judge Advocate General's offices other than the appellate divisions, e.g., the international law divisions.

In 1974, Senior Judge Ferguson and Judge Cook informed the Judge Advocates General that the Court intended to take a more active role in Code revision in 1975. To this end, Code Committee

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<sup>2</sup>*Courtney v. Williams*, 24 U.S.C.M.A. 87, 51 C.M.R. 260 (1976); *Bouler v. Wood* 23 U.S.C.M.A. 589, 50 C.M.R. 854 (1975); *Thomas v. United States*, 23 U.S.C.M.A. 570, 50 C.M.R. 789 (1975); and *Kelly v. United States*, 23 U.S.C.M.A. 567, 50 C.M.R. 786 (1975).

<sup>3</sup>*See, e.g., United States v. Heflin*, 23 U.S.C.M.A. 505, 50 C.M.R. 644 (1975); *United States v. Graves*, 23 U.S.C.M.A. 434, 50 C.M.R. 393 (1975).

<sup>4</sup>*See, e.g., United States v. Evans*, 24 U.S.C.M.A. 14, 51 C.M.R. 64 (1975).

<sup>5</sup>*See, e.g., United States v. Douglas*, Docket No. 30,946 (March 19, 1976); *Mangsen v. Snyder*, 24 U.S.C.M.A. 107, 51 C.M.R. 280 (1976); *United States v. Ware*, 24 U.S.C.M.A. 102, 51 C.M.R. 275 (1976).

meetings were held at the Court in July and October of 1975. During these meetings, changes to the code that had been compiled by the Joint Service Committee were discussed. The various proposals for codal revision were also actively discussed outside of the formal Code Committee meetings.

At the present time, the Court is aware of legislative proposals that are being prepared by The Judge Advocates General, numerous members of the Congress, and the Association of the Bar of the City of New York.

Throughout the year, the Judges and staff of the Court met, both formally and informally, with The Judge Advocates General and other military and civilian lawyers. While the views of various military lawyers and the Court do not always coincide—just as the views of lawyers elsewhere often differ—the Court hopes that the continuing dialogue between the Court and the military will help both make the military justice system the best system of justice anywhere.

ALBERT B. FLETCHER, JR.,  
*Chief Judge*

WILLIAM H. COOK,  
*Associate Judge*

HOMER FERGUSON,  
*Associate Judge*

**STATUS OF CASES**  
**UNITED STATES COURT OF MILITARY APPEALS**  
**CASES DOCKETED**

Total by Services	Total as of June 30, 1973	July 1, 1973 to June 30, 1974	July 1, 1974 to June 30, 1975	Total as of June 30, 1975
<i>Petitions (Art. 67(b)(3)):</i>				
Army .....	14,488	720	1,132	16,340
Navy .....	7,392	469	492	8,353
Air Force .....	5,167	208	279	5,654
Coast Guard .....	60	2	3	65
Total .....	27,107	1,399	1,906	30,412
<i>Certificates (Art. 67(b)(2)):</i>				
Army .....	221	10	9	240
Navy .....	245	5	0	250
Air Force .....	100	2	4	106
Coast Guard .....	11	1	0	12
Total .....	577	18	13	608
<i>Mandatory (Art. 67(b)(1)):</i>				
Army .....	31	0	0	31
Navy .....	3	0	0	3
Air Force .....	3	0	0	3
Coast Guard .....	0	0	0	0
Total .....	37	0	0	37
Total cases docketed .....	27,721	1,417	1,919	<sup>2</sup> 31,057

See footnotes at end of table.

## COURT ACTION

	Total as of June 30, 1973	July 1, 1973 to June 30, 1974	July 1, 1974 to June 30, 1975	Total as of June 30, 1975
<b>Petitions (Art. 67(b)(3)):</b>				
Granted .....	3,072	91	181	3,344
Denied .....	23,349	1,273	1,660	26,282
Denied by Memorandum Opinion .....	6	1	1	8
Dismissed .....	24	6	2	32
Charges dismissed by Order	2	1	0	3
Withdrawn .....	431	4	7	442
Disposed of on Motion to Dismiss:				
With Opinion .....	8	0	0	8
Without Opinion .....	51	5	13	69
Disposed of by Order setting aside findings and sentence	6	0	2	8
Remanded .....	209	1	6	216
Court action due (30 days) <sup>3</sup> ..	97	127	162	162
Awaiting replies <sup>3</sup> .....	60	48	69	169
Decision affirmed by Order ...	0	1	0	1
Proceedings abated .....	0	0	1	1
<b>Certificates (Art. 67(b)(2)):</b>				
Opinions rendered .....	553	21	12	586
Opinions pending <sup>3</sup> .....	6	1	4	4
Withdrawn .....	8	0	0	8
Remanded .....	4	0	0	4
Disposed of by Order .....	1	0	0	1
Set for hearing <sup>3</sup> .....	0	0	0	0
Ready for hearing <sup>3</sup> .....	0	1	1	1
Awaiting briefs <sup>3</sup> .....	0	2	2	2
Leave to file denied .....	2	0	0	2
Motion to dismiss granted ....	0	1	0	1
<b>Mandatory (Art. 67(b)(1)):</b>				
Opinions rendered .....	37	0	0	37
Opinions pending .....	0	0	0	0
Remanded .....	1	0	0	1
Awaiting briefs <sup>3</sup> .....	0	0	0	0
<b>Opinions rendered:</b>				
Petitions .....	2,747	85	79	2,911
Motions to dismiss .....	11	0	0	11
Motions to stay proceedings ..	1	0	0	1
Per Curiam grants .....	57	0	1	58
Certificates .....	484	17	12	513
Certificates and Petitions .....	66	4	0	70
Mandatory .....	37	0	0	37
Petitions remanded .....	2	0	0	2
Petitions for a new trial .....	2	0	0	2
Petitions for reconsideration of:				
Denial Order .....	10	0	0	10

See footnotes at end of table.

## COURT ACTION—Continued

	Total as of June 30, 1973	July 1, 1973 to June 30, 1974	July 1, 1974 to June 30, 1975	Total as of June 30, 1975
Opinion .....	4	0	0	4
Petition for new trial .....	1	0	0	1
Motion to reopen .....	1	0	0	1
Petitions in the nature of writ of error coram nobis...	3	0	0	3
Petition for writ of habeas corpus.....	1	0	0	1
Motion for appropriate relief	1	0	0	1
Petition (motion to strike) .....	1	0	0	1
Miscellaneous Dockets.....	80	9	6	95
Order on Misc. Docket.....	0	0	1	1
<b>Total .....</b>	<b>3,509</b>	<b>115</b>	<b>99</b>	<b>4,723</b>
<b>Completed cases:</b>				
Petitions denied .....	23,349	1,273	1,660	26,282
Petitions dismissed .....	24	6	2	32
Charges dismissed by Order	2	1	0	3
Petitions withdrawn .....	431	4	7	442
Certificates withdrawn .....	8	0	0	8
Certificates disposed of by Order .....	1	0	0	1
Opinions rendered .....	3,420	106	92	3,618
Disposed of on motion to dismiss:				
With Opinion .....	8	0	0	8
Without Opinion .....	51	6	13	70
Disposed of by Order setting aside findings and sentence	6	0	2	8
Writ of error coram nobis by Order .....	3	0	0	3
Motion for bail denied .....	1	0	0	1
Remanded .....	212	1	4	217
Decision affirmed by Order ...	0	1	0	1
Proceedings abated .....	0	0	1	1
<b>Total .....</b>	<b>27,516</b>	<b>1,398</b>	<b>1,781</b>	<b>30,695</b>
<b>Miscellaneous Docket Nos. Assigned:</b>				
(1967 to Present)	321	100	58	479
Pending <sup>5</sup> .....	0	0	6	6
Granted .....	4	2	0	6
Denied.....	106	11	10	127
Withdrawn .....	4	0	2	6
Dismissed .....	127	75	39	241
Issue moot .....	2	0	2	4
Remanded .....	1	0	0	1

See footnotes at end of table.



## COURT ACTION—Continued

Total by Services	Total as of June 30, 1973	July 1, 1973	July 1, 1974	Total as of June 30, 1975
		to June 30, 1974	to June 30, 1975	
Opinions rendered .....	79	8	8	95
Pet for Reconsideration pending <sup>5</sup> .....	0	1	0	1
Pet for Reconsideration denied .....	10	6	3	19
Pet for Reconsideration granted .....	0	1	0	1
Opinion rendered (Pet Recon)	1	0	0	1
Pet for new trial remanded ..	1	0	0	1
<b>Total</b> .....	<b>335</b>	<b>104</b>	<b>70</b>	<b><sup>6</sup> 509</b>

	Pending completion as of		
	June 30, 1973	June 30, 1974	June 30, 1975
Opinions pending .....	17	12	84
Set for hearing .....	0	0	0
Ready for hearing .....	3	11	6
Petitions granted—awaiting briefs .....	9	6	20
Petitions—Court action due (30 days) .....	97	127	162
Petitions—awaiting replies .....	60	48	69
Certificates—awaiting briefs .....	3	0	2
Mandatory—awaiting briefs .....	0	0	0
<b>Total</b> .....	<b>189</b>	<b>204</b>	<b>343</b>

<sup>1</sup> 2 Flag officer cases; 1 Army and 1 Navy

<sup>2</sup> 30,486 cases actually assigned docket numbers. Overage due to multiple actions on the same cases.

<sup>3</sup> As of June 30, 1973, 1974 and 1975.

<sup>4</sup> 3,723 cases were disposed of by 3,633 published Opinions. 177 Opinions were rendered in cases involving 103 Army officers, 38 Air Force officers, 24 Navy officers, 9 Marine Corp officers, 2 Coast Guard officers and 1 West Point cadet. In addition 19 opinions were rendered in cases involving 20 civilians. The remainder concerned enlisted personnel.

<sup>5</sup> As of June 30, 1975.

<sup>6</sup> Coverage due to multiple actions on the same cases.

**REPORT OF**  
**THE JUDGE ADVOCATE GENERAL OF THE ARMY**  
**January 1, 1975 to December 31, 1975**  
**MILITARY JUSTICE ACTIONS**

During the past year the Office of The Judge Advocate General continued to emphasize procedural improvements which could be accomplished by regulatory change rather than by statutory amendment. However, the Army representatives to the Code Committee and the Joint Service Committee on Military Justice continued to participate in the process of reviewing both the *Manual for Courts-Martial, United States, 1969 (Revised edition)*, and the Uniform Code of Military Justice, with a view towards amendment in accordance with the needs of the services and developments in the case law. The Joint Service Committee is expected to propose substantive changes to the *Manual* and Code during 1976, primarily for the purpose of easing military justice administration.

During 1975, 1200 recorded actions and many other miscellaneous actions affecting military justice were completed by the Office of The Judge Advocate General. These included evaluating and drafting legislation, regulations, and other publications pertaining to the governance of the Army and the Department of Defense; monitoring the administration of military justice, including the evaluation of continuing major projects; rendering opinions for the Army Staff; and reviewing various aspects of criminal cases for action by the Army secretariat and staff.

The military magistrate program, implemented at large Army installations in 1974, was extended by Army regulation prepared in 1975. The extended program, effective on 1 January 1976, provides for the review of all pretrial confinement in the Army by neutral and detached magistrates who are unconnected with law enforcement or prosecutorial functions. The military magistrate, a member of the Judge Advocate General's Corps, reviews all documents and personally interviews each person in pretrial confinement within seven days after confinement commences. In determining whether pretrial confinement meets legal requirements and is necessary to assure the accused's presence at trial, the military magistrate considers all

facts and circumstances surrounding the case, including the seriousness of the offense, the character of the accused's prior service, and any attempts by him to frustrate trial. If the military magistrate determines that continued pretrial confinement does not meet legal requirements, he is empowered to direct the release of the accused. In order to insure their neutrality and detachment, nearly all magistrates are assigned to the U.S. Army Legal Services Agency (USALSA) in Falls Church, Virginia, with duty stations throughout the world. All magistrates assigned to USALSA and the few who are locally assigned in remote areas operate under the overall supervision of the Chief Trial Judge, U.S. Army Judiciary.

An Ethics Committee, composed of senior, experienced judge advocates, was established in the Office of The Judge Advocate General, in order to assure fair and regular review of allegations of unethical conduct by Army judge advocates. The committee renders opinions and recommendations to The Judge Advocate General. If an ethical violation is found, The Judge Advocate General's action can range from admonition or reprimand to suspension or decertification as counsel. Opinions of the Committee are periodically published in *The Army Lawyer* for widespread dissemination.

The first changes to the *Manual for Courts-Martial, United States, 1969 (Revised edition)* were signed by the President on 27 January 1975 (E.O. 11835). These changes have two basic purposes: first, to bring various portions of the *Manual* into conformity with decisions of the United States Court of Military Appeals and the United States Supreme Court; and second, to authorize the payment of travel expenses to civilian witnesses who testify at pretrial investigations under Article 32, UCMJ. Change 16 to Army Regulation 27-10, Military Justice, implemented the new provisions of the *Manual* in regard to payment of witnesses. In addition, the regulatory change provided for the introduction of additional information concerning the accused's character prior to sentencing, the use of defense referral cards by defense counsel, new procedures for vacation of suspended sentences to confinement, and clarified procedures for the exercise of custody of U.S. military personnel subject to the criminal jurisdiction of foreign courts.

Litigation against the Army during 1975 continued to have impact on the form and direction of the administration of military justice.

In *Schlesinger v. Councilman*, 420 U.S. 738 (1975), the Supreme Court reversed a decision of the U.S. Court of Appeals for the Tenth Circuit in which the lower court had enjoined the court-martial of an Army captain who was charged with off-post sale, transfer, and possession of marijuana. The Circuit Court held the charges were not "service-connected" under *O'Callahan v. Parker*, 395 U.S. 258 (1969), and thus that a court-martial was without jurisdiction. In reversing, the Supreme Court did not reach the service-connection issue, but

rather held that the lower court's actions were an impermissible interference with the military judicial process because the issue whether the charges were "service-connected" was for military courts to decide. The Supreme Court held that, absent extraordinary circumstances, the Federal courts must "refrain from intervention, by way of injunction or otherwise" in the court-martial process. On the other hand, the Supreme Court held that Article 76, UCMJ, which provides for finality of court-martial proceedings, did not limit collateral attacks on courts-martial solely to habeas corpus petitions.

The U.S. Army Europe (USAREUR) drug abuse prevention program, under a case styled "*The Committee for G.I. Rights, et al v. Callaway, et al*," had been under attack in the Federal courts since May 1973. On 14 January 1974, District Judge Gerhard A. Gesell found that "[t]he existing USAREUR drug plan is so interlaced with constitutional difficulties that (USAREUR) Cir 600-85 must be withdrawn and cancelled along with all earlier related orders and instructions." He specifically prohibited the use of any evidence resulting from a USAREUR drug inspection for any purpose other than an honorable discharge, precluded administrative sanctions against drug abusers without a preliminary due process hearing, and held that the prohibition against displaying items on barracks walls that constituted "a clear danger to military loyalty, discipline, or morale" was too vague to be enforced. On 7 March 1974 the United States Court of Appeals for the District of Columbia stayed the execution of Judge Gesell's opinion pending appeal by the Army.

On 2 September 1975 the Court of Appeals held the USAREUR drug abuse program constitutional (*Committee for GI Rights v. Callaway*, 518 F.2d 466 (D.C. Cir., 1975)). In so doing, the court specifically approved unannounced, warrantless drug inspections under the conditions and safeguards established by the USAREUR Circular, the imposition of rehabilitative administrative sanctions without prior hearings, and the USAREUR "poster" restriction. The Court of Appeals made its specific rulings in the context of the USAREUR experience with drug abuse and was guided by the Supreme Court's observations that the fundamental military requirement for obedience and discipline may render permissible in the military actions forbidden in civilian society. Judge Gesell's decision was reversed on the merits in all regards.

The celebrated case of Lieutenant William Calley continued through the Federal courts during 1975. Following his conviction by general court-martial for mass murder in My Lai, Republic of Vietnam, and subsequent review by the U.S. Army Court of Military Review and U.S. Court of Military Appeals, Calley was released on bail by a Federal District Judge on 27 February 1974. This order was ultimately reversed on appeal to the Fifth Circuit (*Calley v. Callaway*, 496 F.2d 701 (5th Cir. 1974)). On the merits, the District

Court found that Calley had been denied a fair trial under the Constitution (382 F. Supp. 650 (M.D. Ga., 1974)). The District Court's disposition was based upon the following findings: (1) prejudicial pretrial publicity, (2) denial of due process and right of confrontation by denial to the accused of certain requested witnesses and the House Armed Services Committee transcript of its My Lai hearings, and (3) illegally drawn charges. On 10 September 1975, the Fifth Circuit reversed the District Court decision, holding that each of Calley's claims of constitutional defects had been given full and fair consideration within the military justice system, that he had received a fair trial, and that there was no reason to interfere with the military judicial process. (On 5 April 1976, Calley's petition for certiorari was denied by the Supreme Court.)

Also brought under review during 1975 was the question whether a Court of Military Review's mandate "authorizing" a rehearing rather than ordering one is defective, and whether a rehearing must be at the original location or may be held at Fort Leavenworth, Kansas, the site of the United States Disciplinary Barracks. In *Hamlin v. Callaway*, Civil No. 1761 (S.D. Ga., 8 April 1975), the Army practice on both these matters was found to be proper.

### *MILITARY JUSTICE STATISTICS AND U.S. ARMY JUDICIARY ACTIVITIES*

a. A statistical summary of court-martial activities for FY 1975 follows:

The number of persons tried by courts-martial for fiscal year 1975 (average Army strength, 790, 741) follows:

	Convicted	Acquitted	Total
General .....	1,462	173	1,635
Special (W/BCD's) .....	1,120	146	1,266
Special (W/O BCD's) .....	8,304	955	9,259
Summary .....	3,727	391	4,118
<b>TOTAL .....</b>	<b>14,613</b>	<b>1,665</b>	<b>16,278</b>

Records of trial by general and special (BCD) courts-martial received by The Judge Advocate General during fiscal year 1975: <sup>1</sup>

For review under Article 66 (General) .....	1,311
For review under Article 66 (Specials W/BCD's) .....	1,113
For examination under Article 69 .....	365
<b>TOTAL .....</b>	<b>2,789</b>

<sup>1</sup> Figures in this section are based on records of trial as opposed to number accused involved. Because of cases in which more than one individual was tried, the figures in this section will be less than those in the other sections.

Workloads of the Army Court of Military Review during the same period:

On hand at the beginning of period .....		1,399
General Courts-Martial .....	840	
Special Courts-Martial (BCD).....	559	
Referred for review.....		<sup>2</sup> 2,548
General Courts-Martial .....	1,412	
Special Courts-Martial (BCD).....	1,136	
TOTAL .....		<u>3,947</u>
Reviewed.....		3,064
General Courts-Martial .....	1,684	
Special Courts-Martial (BCD).....	1,380	
Pending at close of period.....		883
General Courts-Martial .....	568	
Special Courts-Martial (BCD).....	315	
TOTAL .....		<u>3,947</u>
Miscellaneous Docket Matters:		
Denied.....		0
Dismissed .....		2
Mooted .....		0

Actions taken during 1 July 74 thru 30 June 75 by Army Court of Military Review:

Findings and sentence affirmed .....	2,580
Findings affirmed, sentence modified .....	272
Findings affirmed, sentence commuted .....	2
Findings affirmed, no sentence affirmed.....	3
Findings affirmed, sentence reassessment or rehearing as to sentence only ordered .....	6
Findings partially disapproved, sentence affirmed .....	24
Findings partially disapproved, rehearing ordered .....	1
Findings & sentence affirmed in part, disapproved in part .....	37
Findings & sentence disapproved, rehearing ordered .....	27
Findings & sentence disapproved, charges dismissed .....	39
Returned to field for new SJA & C/A action .....	57
Proceedings abated, death of accused .....	5
Case returned to field for lack of jurisdiction by ACOMR .....	3
Order for psychiatric examination .....	4
Returned to TJAG for a limited hearing before a different MJ .....	2
Motion for extraordinary relief denied.....	1
Motion for appropriate relief denied.....	1
TOTAL.....	<u>3,064</u>

Of 3,064 accused whose cases were reviewed by the Court of Military Review pursuant to Article 66 during the fiscal year, 2,696 (88.0%) requested representation by appellate defense counsel.

<sup>2</sup> This figure includes 24 cases which were referred to the Army Court of Military Review pursuant to Article 69, Uniform Code of Military Justice; 3 cases referred after rehearing; and 31 cases referred for reconsideration.

The records in the cases of 1,141 accused were forwarded to the United States Court of Military Appeals pursuant to Article 67(b) during FY 75. These comprised 37.2% of the number of these cases reviewed by the Court of Military Review during the period. Of the mentioned 1,141 cases, 1,132 were forwarded on petition of accused and 9 were certified by TJAG.

The Court of Military Appeals took the following actions on Army cases during fiscal year 1975:

Petitions Denied		Petitions Granted			
951		105			
Petitions		Certification		Mandatory Review	
Affirmed	Reversed	Affirmed	Reversed	Affirmed	Reversed
13	26	4	4	0	0

**Applications for relief, Article 69:**

Pending 1 July 74 .....	174
Received .....	433
Disposed of .....	544
Granted .....	75
Denied .....	484
Field (action by SJA) .....	1
No Jurisdiction .....	0
Withdrawn .....	5
Pending 1 July 1975 .....	63

The number of service personnel convicted of felonies in federal and state courts during fiscal year 1975 follows:

CONUS.....	1,655
Overseas.....	45
<b>TOTAL.....</b>	<b>1,700</b>

**b. An analysis of the statistics discloses the following:**

	1974	1975	Percent of Change
Strength of the Army.....	799,301	790,741	down 1
Total courts-martial.....	21,987	16,278	down 26
GCMs .....	1,848	1,635	down 12
BCD Specials .....	1,361	1,266	down 7
Specials .....	13,453	9,259	down 31
Summaries.....	5,325	4,118	down 23

c. The US Army Judiciary is an element of the US Army Legal Services Agency. It consists of the US Army Court of Military Review (a Chief Judge, 12 appellate military judges and 5 commissioners), the Clerk of Court (one civilian attorney and one officer-

attorney), the Examination and New Trials Division (one civilian attorney and 3 officer-attorneys), and the Trial Judiciary (one Chief Trial Judge and 54 military judges).

d. The Agency also includes the Government Appellate Division (27 officers), the Defense Appellate Division (38 officers), Contract Appeals Division (20 officers), Military Magistrates (14 officers) and Legal Assistance Division (2 officers). The Contract Appeals Division has no function related to the US Army Judiciary and its court-martial mission, but represents the Army in contractual disputes.

e. Several continuing legal education programs, seminars and conferences sponsored by military and civilian bar groups were attended by military judges and other judge advocates during the year. Programs included the National College of the State Judiciary at Reno, Nevada, the Homer Ferguson Conference on Appellate Advocacy at Washington, D.C., the American Bar Association Convention at Montreal, Canada, the American Bar Association Conference on Criminal Justice at Las Vegas, Nevada, and the National College of District Attorneys' Practical Problems Seminar at Orlando, Florida.

f. Trials by military judges alone continued to represent a substantial savings of manpower of line officers during FY 75 as reflected by the following:

FY	71	72	73	74	75
GCM Trials by Judge Alone .....	95%	66%	67%	81%	66%
SPCM (BCD) Trials by Judge Alone .	84%	93%	88%	91%	87%

g. As executive agent for the Department of Defense, the Department of the Army (through the Office of The Judge Advocate General) maintains and collates information concerning the exercise of foreign criminal jurisdiction over U.S. servicemen. During the period 1 December 1974-30 November 1975, out of 16,214 world-wide cases involving primary foreign but concurrent jurisdiction over U.S. Army personnel, foreign authorities waived their jurisdiction in 15,550 cases for a waiver rate of 95.9 percent. This compares with a waiver rate of 94.6 percent for the previous reporting period.

## **EDUCATION AND TRAINING**

The Judge Advocate General's School, US Army, continued to expand its educational activities on behalf of military lawyers in calendar year 1975, providing resident instruction for nearly 1,992 students and conferees.

### **COURSES OF INSTRUCTION**

In May 1975 the Judge Advocate Officer Advanced Course, approved by the American Bar Association, graduated a total of 38 students (including 30 Army, 1 Navy, and 5 Marine judge advocates, and 2 Allied Officers from Japan and the Republic of China). The revised curriculum consists of 22 semester hours of core courses, 8 elective, and 6 for the legal writing program.



Some 228 newly-commissioned Army judge advocates attended one of the four nine-week Judge Advocate Officer Basic Courses held during the year. In addition, 12 Coast Guard officers and 3 Allied officers attended the Basic Courses. Many of the Army students had attended a preliminary three-week phase at the US Army Quartermaster School, Fort Lee, Virginia, emphasizing officer orientation and introductory military and police science subjects.

The School's continuing legal education program for active and reserve force judge advocates included a qualification course for military judges and courses in criminal trial advocacy, criminal law, procurement law, international law, overseas judge advocate operations, claims, military administrative law developments, legal assistance, command legal problems, civil rights, environmental law, and federal labor relations. In all, The Judge Advocate General's School courses were attended by 527 Active Army judge advocates, 315 Army Reserve and Army National Guard judge advocates, 69 judge advocates of other services, and 189 government civilian attorneys (approximately one-half of whom represented agencies other than the Department of Defense). In addition, the School was the site of the annual worldwide Judge Advocate General's Conference and the Sixth Annual United States Army Reserve Judge Advocate Conference.

Annual training of the United States Army Reserve Headquarters Teams in the Judge Advocate General's Service Organization brought 85 officers, including warrant officers, and 76 enlisted men to the School in June 1975, while the USAR Branch Officer Advanced Course and Reserve Component General Staff Course brought 134 officers to the School for training in July. The 1034th USAR School, Manchester, New Hampshire, administered the training for the JAGSO Detachments and the 2093d USAR School, Charleston, West Virginia, administered the BOAC and the General Staff Course.

At the year's end, 1,655 students were enrolled in the School's nine separate correspondence courses, and 42,000 copies of correspondence course lessons had been provided to other Army branch schools for use in their own courses.

In 1975 The Judge Advocate General's School conducted its 18th through 22d Senior Officer Legal Orientations for installation, brigade and battalion commanders. A similar course was presented as an elective for US Army War College students headed for command assignments.

Paraprofessional training responsibilities are divided among The Judge Advocate General's School, US Army Institute of Administration (Adjutant General School), and the School of Naval Justice. Nineteen selected noncommissioned officers completing the NCO Advanced Course attended a final, two-week phase conducted at The

Judge Advocate General's School in May 1975. Additional warrant officers, enlisted personnel, and legal secretaries have attended the School's Legal Assistance and Criminal Law Military Lawyer's Assistant Courses and the Law Office Management Course.

### **MAJOR PROJECTS**

The Judge Advocate General's School continued to improve the mobilization readiness of reserve component personnel by providing reserve component technical training (on-site) to reserve component judge advocate officers at their home stations during the inactive duty phase of their training program. During calendar year 1975 the School's faculty members conducted 52 sessions to 1,052 reserve component judge advocate officers in 29 cities. On-site training in criminal law, administrative and civil law, procurement law and international law has improved the capability of unit and non-unit reserve judge advocates for providing legal services to the Army in the event of mobilization. Additionally, it has increased their capacity for expanding legal services in the Army during peacetime by providing practical assistance to Army judge advocate offices by performing on-the-job reserve training in those offices.

The training film, TF 27-4863, "Article 15, Nonjudicial Punishment," was released with technical instruction from TJAGSA, and the training film, "Military Justice, UCMJ, Part II," was completed and is pending final review before release. This film will serve to satisfy the requirements of Article 137, UCMJ.

A new elective was offered to the Advanced Course, "Analysis of the Military Criminal Legal System." This course has been accepted by the University of Virginia, and Advanced Class students and University of Virginia students may take the course for credit towards a J.D. or LL.M. degree at the University of Virginia.

A study on the utilization of videotape in law enforcement agencies throughout the Army was undertaken during 1975 and is at the U.S. Army Training and Doctrine Command planning level at this time.

School publications during 1975 included 5 issues of the *Military Law Review* (including the Bicentennial issue), 12 issues of *The Army Lawyer*, and 8 issues of the *Judge Advocate Legal Service*. The School also published *The Army Lawyer: A History of the Judge Advocate General's Corps, 1775-1975*. The latest edition of *Military Justice, Evidence* (DA Pam 27-22), was published in December 1975; substantial changes to the *Trial Procedure Pamphlet* (DA Pam 27-173) were also completed. DA Pamphlet 27-174, *Jurisdiction*, was revised during CY 1975 and is presently at the printer for publication.

### **PERSONNEL**

The average strength of the Judge Advocate General's Corps

remained relatively constant at 1590. At the end of 1975 there was an increase from last year in minority and female attorneys. There were 52 Blacks, 11 Mexican-Americans, 6 Puerto Ricans, 9 Orientals, 1 American Indian, and 31 female attorneys. High interest in JAGC commissions continues and the Corps is having no difficulty in maintaining its strength.

A historic moment for the Judge Advocate General's Corps occurred when the Secretary of the Army approved a separate Judge Advocate promotion list for temporary promotion to the grades of O4, O5 and O6, based upon recognition of the almost 45% deficit in field grade officers in the Corps and its effect upon the Army. This will not result in the immediate promotion of any judge advocate officers. It should result, however, to some degree, in increased promotion opportunities for judge advocate officers over the next several years.

The Corps is entering a new era in personnel management because of the need to insure that it is only composed of top quality lawyers to meet the new challenges and discharge its public responsibility. All applicants, including recalls to active duty, must go before a formal selection board, which meets twice a year. After an officer completes his initial three or four year obligation, he must then compete for career status (RA or Voluntary-Indefinite) before another selection board composed of senior judge advocates, including a general officer.

#### **FORECAST**

As legal business does not conclude with the year's end, a number of activities begun in 1975 or even earlier will, it is hoped, come to fruition in the next year. Refinements will be made in the review of pretrial confinement. Amendments to the UCMJ supported by all Judge Advocates General will be presented for approval within and outside the military departments. Military adjective law will continue to be examined to reveal and correct archaic or inefficient procedures. Litigation in civil courts will be conducted in a climate of recognition of the unique requirements within the military, engendered by the Supreme Court.

WILTON B. PERSONS, JR.  
*Major General, USA*  
*The Judge Advocate General*  
*United States Army*

**ANNUAL REPORT**  
**OF**  
**THE JUDGE ADVOCATE GENERAL OF THE NAVY**  
**pursuant to**  
**THE UNIFORM CODE OF MILITARY JUSTICE**  
**for the period**  
**January 1, 1975, to December 31, 1975**

Following the practice in recent years of having the Code Committee Report reach the Armed Services Committee of Congress shortly after the convening of each new session, this report, although embracing calendar year 1975, contains, unless otherwise indicated, statistical information covering fiscal year 1975.

*SUPERVISION OF THE ADMINISTRATION OF MILITARY JUSTICE.* Complying with the requirements of article 6(a), Uniform Code of Military Justice, the Judge Advocate General and the Deputy Judge Advocate General continued to visit commands within the United States, Europe, and the Far East in the supervision of the administration of military justice.

*COURT-MARTIAL WORKLOAD.* a. There has been little change, generally speaking, in the total number of courts-martial during fiscal year 1975. (See Exhibit A attached to this report.)

b. During fiscal year 1975, the Navy Court of Military Review received for review 597 general courts-martial and 2,919 special courts-martial (total 3,516) as compared with 485 general courts-martial and 2,115 special courts-martial (total 2,600) during fiscal year 1974. Of 3,516 cases received by the Navy Court of Military Review, 2,392 accused requested counsel (68 percent).

*NAVY-MARINE CORPS TRIAL JUDICIARY.* 1975 was the first full calendar year of operation of the expanded Navy-Marine Corps Trial Judiciary. Under the provisions of SECNAVINST 5813.6B, promulgated 18 June 1974 with an effective date of 1 July 1974, the Trial Judiciary provided military judge services for both general and special courts-martial.

The Navy-Marine Corps Trial Judiciary provided military judges for 684 general courts-martial during calendar year 1975, a decrease of 10 cases from the 1974 level of 694 general courts-martial. In 1975, 64 percent of the general courts-martial were tried by courts constituted with military judge alone. This compares with 71 percent of the general courts-martial tried by courts constituted with military judge alone during 1974.

The Navy-Marine Corps Trial Judiciary supplied military judges for 5,856 special court-martial trials during calendar year 1975, an increase of 1,827 cases from the 1974 level of 4,029. In addition, ad hoc military judges presided in 767 special courts-martial for which full-time military judges were unavailable. In 1975, 88 percent of the special courts-martial were tried by courts constituted with military judge alone. This compares with 92 percent of the special courts-martial tried by courts constituted with military judge alone during 1974.

The present manning level of the Navy-Marine Corps Trial Judiciary is 18 general court-martial military judges, a decrease of one from the manning level at the close of calendar year 1974. Nineteen special court-martial military judges are assigned to the Navy-Marine Corps Trial Judiciary, an increase of one from the manning level at the close of calendar year 1974.

Military judges of the Navy-Marine Corps Trial Judiciary attended a variety of professional meetings and seminars during calendar year 1975. Some 20 military judges attended the Annual Judge Advocate General's Conference held in Washington, D.C., 29 September to 3 October 1975. Two special court-martial military judges attended a special court judges seminar at the National College of the State Judiciary, Reno, Nevada, 24-29 April 1975. One general court-martial military judge and one special court-martial military judge attended a regular four-week trial judges course at the National College during the period 15 June-12 July 1975. Two general court-martial military judges and three special court-martial military judges attended a military judicial seminar at Fort Ord, California, 3-7 December 1975.

*NAVAL LEGAL SERVICE.* The Naval Legal Service (NLS) consists of 18 Naval Legal Service Offices and 15 subordinate branch offices located throughout the world. The total manpower strength authorization for the NLS includes 284 judge advocates, 178 legalmen, and 178 civilian employees. Navy judge advocates in the NLS comprise approximately one-third of the Navy's total judge advocate strength.

The NLS, under the direction of the Judge Advocate General in his capacity as Director, Naval Legal Service, through consolidation of available legal resources at locations with a high concentration of naval commands, has been able to provide timely response to re-

quests from naval commands for counsel and trial team services. Further, it has proven to be an ideal vehicle for insulating defense counsel from any possibility of command influence in their defense of court-martial accused, inasmuch as defense counsel are now placed under the authority of the Director, Naval Legal Service (Judge Advocate General).

The responsibilities of the NLS extend beyond merely providing counsel for courts-martial. They include providing all necessary legal services to local commands which are beyond the scope or capacity of the command's staff judge advocate. With the establishment of the NLS, the Navy believes it is able to obtain optimum utilization of its lawyer resources in meeting the needs of commands and sailors alike.

*ARTICLE 69, UCMJ, PETITIONS.* There has been an increase in the number of petitions for relief submitted pursuant to article 69, Uniform Code of Military Justice, a provision which permits the Judge Advocate General to act in court-martial cases that have not been reviewed by the Navy Court of Military Review. In calendar year 1975, 86 petitions for relief were received by the Judge Advocate General, as opposed to 65 petitions received in calendar year 1974. Eighty petitions, including 14 pending from calendar year 1974, were reviewed during the year and relief was granted, in whole or in part in 14 of the petitions reviewed.

*NEW TRIAL PETITIONS.* In calendar year 1975, ten petitions for new trials were submitted pursuant to article 73, Uniform Code of Military Justice. Two petitions were denied within the Office of the Judge Advocate General, and one petition was pending review at the conclusion of calendar year 1975. Of the remaining, two petitions were forwarded to the U.S. Court of Military Appeals and five petitions were forwarded to the Navy Court of Military Review for appropriate consideration.

*NAVAL JUSTICE SCHOOL.* Courses of instruction in military law and related administrative matters were presented at the Naval Justice School during 1975 to 1,843 officers and enlisted personnel in the Armed Forces. Two hundred forty-four Navy and Marine Corps lawyers were trained for active-duty service as judge advocates. Seventy-eight lawyer reservists of the Navy and Marine Corps were provided basic or refresher training in military law. Fourteen Navy and Marine Corps judge advocates attended a course presented for military judges. One hundred seventy-one Army, Navy, and Coast Guard enlisted personnel were trained to perform legal clerk and court reporter duties. A total of 1,066 Navy, Marine Corps, and Coast Guard officers received instruction designed for commanding/executive officers at Newport, Rhode Island, and other locations.

In addition to its basic courses of instruction, the Naval Justice School presented instruction on varied military justice and civil law

matters to 5,032 officers at other schools in Newport, Rhode Island, and New London, Connecticut.

**ANNUAL JUDGE ADVOCATE GENERAL'S CONFERENCE.** a. A conference of judge advocates from all major Navy and Marine Corps commands was held in Washington, D.C., on 30 September-3 October 1975. The conference heard addresses by the Secretary of the Navy, Chief of Naval Operations, Commandant of the Marine Corps, Chief Judge, U.S. Court of Military Appeals, and Director, Naval Reserve Law Programs. The conference included presentations on various topics including trends in litigation in the Navy, trends in military justice, human goals program in the U.S. Navy, pending litigation, and the Navy Court of Military Review. In addition to these presentations, military justice seminars were held on matters pertaining to the responsibilities of trial counsel, defense counsel, military judges, and staff judge advocates. Additional seminars covered professional ethics; Freedom of Information and Privacy Acts; environmental law; labor relations; international law; investigations; admiralty; administrative discharge procedures; legal assistance; taxes; library management; and physical evaluation board procedures.

b. This annual conference of judge advocates has once again demonstrated the tremendous benefit which can be derived when judge advocates from all over the world have the opportunity to participate in seminars concerning areas of mutual concern which have arisen during the past year. The JAG Conference centered its efforts on informing judge advocates in the field of current changes in the military-justice system and expected future changes. Plans are now underway for a similar conference in October 1976.

**CERTIFICATION OF NCMR DECISIONS TO USCMA FOR REVIEW PURSUANT TO ARTICLE 67(b), UCMJ.** During calendar year 1975, no cases were certified for review by USCMA pursuant to article 67(b), UCMJ.

**ARTICLE 138 COMPLAINTS OF WRONGS.** During calendar year 1975, 111 article 138 complaints of wrongs were received in the Office of the Judge Advocate General for review and transmittal to the Secretary of the Navy.

**JOINT-SERVICE COMMITTEE ON MILITARY JUSTICE.** The Joint-Service Committee on Military Justice has as its primary goal the preparation and evaluation of proposed amendments and changes to the Uniform Code of Military Justice and the *Manual for Courts-Martial, United States, 1969 (Rev.)*. That Committee continues to act as a forum for the exchange of ideas among the services. The Deputy Assistant Judge Advocate General (Military Justice) serves as the Navy member of the Joint-Service Committee on Military Justice and a representative of the Judge Advocate General of the Navy serves as a full-time member of the working group of the

committee. The working group concluded a preliminary screening of a number of proposals for amending the Uniform Code of Military Justice, and the Committee, at the direction of the Judge Advocates General, decided on a number of legislative objectives designed to make the military-justice system more efficient. The working group completed a draft of proposed legislation in furtherance of those objectives. The proposed legislation was approved by the service Judge Advocates General in June 1975, and was presented to the Judges of the U.S. Court of Military Appeals for comment. Those proposals have also been forwarded to the Secretaries of the military departments and the service chiefs for their review.

The proposed legislation includes provisions reducing the scope of the staff judge advocate's pretrial advice; limiting an accused's right to individual military counsel; removing the convening authority from posttrial review of findings; eliminating the staff judge advocate's post-trial advice in cases reviewed by the Court of Military Review; permitting early execution of sentence; instituting a system of discretionary appeals; and reducing the requirements for verbatim records of trial in certain cases.

*CNO TASK GROUP ON THE NAVY CORRECTIONS SYSTEM.* The Military Justice Division provided a full-time voting member to the Chief of Naval Operations Task Group on the Navy Corrections System. This group, which held its first meeting on 13 February 1975, was tasked to study and propose alternatives to the current corrections system. In furtherance of its assigned mission, the group held several sessions and reviewed the existing system of corrections. The study commenced with a review of the Navy's recruiting and screening policies and concluded with a study of the impact of the Navy's present administrative/disciplinary/criminal policies. The Judge Advocate General's representative chaired the subcommittee on the disciplinary/criminal portion of the study. The Task Group's report was submitted on 11 March 1975. It contained several proposals pertaining to Navy policies and procedures concerning both the enlistment of quality recruits and the timely discharge of personnel whose attitudes, professional performance, or personal behavior are not compatible with a military environment.

*SECNAV TASK GROUP ON CRIME REPORTING.* On 25 March 1975, the Secretary of the Navy established a SECNAV Task Group to study the present system utilized to report criminal activity within the naval service and to recommend procedures for coordination and standardization of crime reporting within the naval service. The Military Justice Division provided one full-time member to the Task Group. The Task Group reviewed existing systems of crime reporting within all the services, and various civilian agencies and the FBI. It was determined that the FBI Uniform Crime Reporting (UCR) system has been adopted as the basic standard by almost all



agencies for the reporting of index crimes; *i.e.*, homicide, rape, robbery, assault, burglary, larceny, and motor vehicle theft. The reporting of other than index crimes varied considerably, and was tailored to the unique requirements of the individual organization. The Task Group report was submitted on 10 June 1975. The proposed reporting system would adopt the UCR for index crimes and provide supplementary information designed to permit broad analysis and discernment of trends in criminal activity and the state of discipline within the naval service.

**CIVIL LITIGATION.** During calendar year 1975, the Judge Advocate General worked closely with the Justice Department in several civil litigation cases having potential impact on the military justice system. Assistance was provided to the Department and to various U.S. attorneys. This assistance included preparation of legal memorandums and litigation reports; preparation of briefs and motions in conjunction with a U.S. attorney; preparation of U.S. attorneys for oral arguments before all Federal courts, including the U.S. Supreme Court; and assignment of judge advocates to make oral arguments in U.S. district courts and courts of appeals. A few of the more significant cases and issues involved are set forth below.

a. *Middendorf v. Henry.* The issue presented in this case was whether a summary court-martial could adjudge sentences including confinement if the accused were not represented by counsel. This issue had produced a split of authority in the circuits following the Supreme Court's decision in *Argersinger v. Hamlin*. On 24 March 1976, the Supreme Court ruled, in an opinion by Justice Rehnquist, that the Constitution does not require the appointment of counsel to represent persons tried by summary courts-martial.

b. *Allison v. Saxbe.* This case involves the proper scope of review of court-martial convictions in Federal habeas corpus proceedings. The petitioner was a seaman convicted of arson in a \$7.5 million fire aboard USS FORRESTAL. After his escape from Portsmouth Naval Disciplinary Command, the petitioner was at liberty for six months before he surrendered to military authorities in October 1974 at San Francisco. Promptly thereafter Allison filed a petition for habeas corpus in the U.S. District Court for the Northern District of California. The District Court denied Allison's petition in a memorandum opinion of 5 September 1975. Allison has appealed to the U.S. Court of Appeals for the Ninth Circuit.

c. *Stahl v. Middendorf.* This was a class action against the Secretary of the Navy which presented the issue of whether military counsel detailed to represent servicemen before courts-martial must also be permitted to represent their accused clients in Federal district court in actions collaterally attacking the court-martial proceedings. The U.S. District Court for the Northern District of Illinois, in an unpublished opinion, held that the Uniform Code of

Military Justice requires free representation of defendants before courts-martial only. Accordingly, the decision whether to allow military lawyers to represent their clients in civil courts is properly within the discretion of the military departments. The court dismissed plaintiff's suit and a projected appeal was abandoned by plaintiff on 3 October 1975.

d. *United States v. Rogers*. In this case the District Court for the Eastern District of Virginia was asked to determine the scope of a commanding officer's authority to order a search of a civilian employee aboard a naval base overseas. The court held that while a commanding officer is authorized by *Navy Regulations, 1973*, to order such searches of civilians, only those searches which are reasonable under the fourth amendment are valid. The court sustained the command-authorized search challenged in the case.

e. *McDonald v. United States; Sanders v. United States*. These consolidated cases challenged the constitutionality of the assignment of multiple prosecutorial and judicial roles to convening authorities under the Uniform Code of Military Justice. On 18 February 1976, the U.S. Court of Claims rendered its opinion upholding the challenged provisions of the Uniform Code of Military Justice.

f. *Priest v. Secretary of the Navy*. This case involves the scope of freedom of the press under the first amendment as applied to members of the military. The U.S. District Court for the District of Columbia granted the Government's motion for summary judgment. The plaintiff has appealed to the U.S. Court of Appeals for the District of Columbia Circuit.

## EXHIBIT A

	Fiscal Year 1975	Fiscal Year 1974
General courts-martial		
Received for review under Art 66 .....	597	485
Received for review under Art 69 and acquittals .....	94	117
Total .....	691	602
Special courts-martial		
Received for review under Art 66 .....	2,919	2,115
Received for review under Art 65c .....	0	0
Reviewed in the field .....	10,439	10,817
Total .....	13,358	12,932
Summary courts-martial		
Received for review under Art 65c .....	0	0
Reviewed in the field .....	8,706	8,941
Total all courts-martial .....	22,755	22,475
Navy Court of Military Review Actions		
On hand for review end last fiscal year .....	261	250
Received for review during fiscal year .....	3,516	2,600
Total on hand .....	3,777	2,850
Reviewed during fiscal year .....	3,346	2,589
Pending review end current fiscal year .....	431	261
Total .....	3,777	2,850
Findings modified or set aside by Navy Court of Military Review during fiscal year .....	122	123
Requests for appellate counsel before NCMR ..	2,392	1,589
U.S. Court of Military Appeals Actions		
Petitions forwarded to USCMA .....	491	465
Cases certified to USCMA by JAG .....	0	5
Total cases docketed with USCMA .....	491	470
Petitions granted by USCMA .....	48	22
Petitions denied by USCMA .....	435	424
Total petitions acted upon by USCMA...	483	446

**REPORT**  
**THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE**

**January 1, 1975 to December 31, 1975**

1. During 1975, The Judge Advocate General, Major General Harold R. Vague, made staff visits to legal offices in the United States and overseas as required by the UCMJ, Article 6(a). Accompanied by Colonel C. Claude Teagarden, General Vague attended the United States Air Forces in Europe (USAFE) Judge Advocate Conference. He attended the annual American Bar Association meeting in Montreal, Canada and presented his annual report to the Judge Advocates' Association there. General Vague and Colonel Teagarden attended the Inter-American Bar Association meeting in Cartagena, Columbia. General Vague also attended and participated in meetings of civic, professional, and military organizations. The Judge Advocate General hosted the Major Command Staff Judge Advocate Executive Conference at the Forrestal Building, Washington, D. C. in May, 1975 and the annual world-wide general courts-martial convening authority Staff Judge Advocate Conference at Homestead Air Force Base, Florida, in October 1975.

The Area Defense Counsel Program completed its one-year world-wide test in June. Written evaluations, requested by General Vague, The Judge Advocate General, were obtained from all convening authorities, staff judge advocates, military judges, chief circuit defense counsel and area defense counsel to determine if the program should be continued on a permanent basis. A board consisting of two line officers and two judge advocates convened during the week of 23-27 June and evaluated the program. The board recommended that the Area Defense Counsel Program be retained and on 27 July 1975, the Chief of Staff authorized the program on a permanent basis. As mentioned in the 1974 report, the Area Defense Counsel Program separates the defense function from both local command and judge advocate control. Area Defense Counsel are assigned directly to the Office of The Judge Advocate General, Headquarters USAF.

2. a. The number of records of trial received in the Office of The Judge Advocate General, for review pursuant to Article 66 and for examination pursuant to Article 69, during fiscal year 1975, is shown in the following table:

Total number records received .....		* 515
For review under Article 66 .....		463
General Court-Martial records .....	180	
Special Court-Martial records .....	283	
Examined under Article 69 .....		35
Acquittals under Article 61 .....		17

The Court of Military Review modified the findings and/or sentence in 54 cases.

b. The workload of the Court of Military Review was as follows:

Cases on hand 30 June 1974 .....		138
Cases referred for review .....		463
Total for review .....	601	
Cases reviewed & dispatched .....		**521
Cases on hand 30 June 1975 .....		80

c. During the fiscal year 86.4% of the accused whose cases were referred for review under Article 66 requested representation by Appellate Defense Counsel before the Court of Military Review.

d. The following table shows the number of cases forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67(b); and the number of petitions granted during the period:

Cases reviewed & dispatched by Court of Review .....		521
Number cases forwarded to USCMA .....		283
Cases petitioned .....	279	
Cases certified .....	4	
Percent forwarded of total cases reviewed.....		54.3%
(Increase of 18.7% over FY 74)		
Petitions granted.....		19
Percent grants of total petitioned.....		6.8%
(Decrease of 1.3% over FY 74)		
Percent petitions granted of total cases reviewed by Court of		
Review .....		3.6%
(Increase of 0.7% over FY 74)		

e. During the fiscal year, the following numbers of persons were tried by courts-martial convened in the Air Force:

General Courts-Martial .....	201
Special Courts-Martial .....	1,544
Summary Courts-Martial .....	75
<b>Total .....</b>	<b>1,820</b>

The overall court-martial rate per 1,000 assigned personnel was 2.9 as compared to 4.3 in FY 1974, a rate decrease of 32.6%.

\*This represents a decrease of 23% from the number of cases received in FY 74 (670).

\*\*This represents a decrease of 12% from the number of cases reviewed during FY 74 (593).

### 3. Reportable Article 15 Actions, FY 1975:

	NUMBER OF CASES	PERCENTAGE OF TOTAL
TOTAL CASES .....	28,372	
Officers .....	129	0.5%
Airmen .....	28,243	99.5%
PUNISHMENTS IMPOSED***		
Restrictions (over 14 days)		
Officers .....	3	2.3%
Airmen .....	1,377	4.9%
Quarters Arrest/Correctional Custody		
Officers .....	0	0.0%
Airmen .....	1,916	6.8%
Extra Duties		
Airmen .....	4,710	16.7%
Reduction in Grade		
Airmen .....	****21,132	74.8%
Forfeiture of Pay		
Officers .....	106	82.2%
Airmen .....	20,728	73.4%
Detention of Pay		
Officers .....	0	0.0%
Airmen .....	26	0.1%
Written Reprimand		
Officers .....	83	64.3%
Airmen .....	357	1.3%
MITIGATING ACTIONS		
Appeals Taken		
Officers .....	23	17.8%
Airmen .....	2,683	9.5%
Appeals Granted		
Officers .....	5	*****21.75%
Airmen .....	481	*****17.9%
Suspension of Punishment		
Officers .....	13	10.1%
Airmen .....	17,629	62.4%
Other Action*****		
Officers .....	0	0.0%
Airmen .....	616	2.2%

The overall Article 15 rate per 1,000 assigned personnel was 45.2 as compared to 54.3 in the previous fiscal year, a rate decrease of 16.8 percent.

4. During calendar year 1975 the Department's Preventive Law Program, begun in late 1974, was carried forward. Dedicated to the

\*\*\* The number of punishments imposed will not equal the number of cases as some offenders receive a combination of punishments.

\*\*\*\* Of the reductions in grade, 73.3% were suspended at the time the punishment was imposed.

\*\*\*\*\* Of appeals taken.

\*\*\*\*\* Includes mitigation, remission and set aside actions.

belief that the objectives of the law can be achieved largely through self-discipline, the program was designed to educate and inform Air Force people of their rights and responsibilities as service members and as citizens. Military Law Seminars were held at Air Force bases to teach people about the system under which they live and work, and to teach them ways of problem avoidance. As another facet of the program the Department prepared and distributed studies of the law in each of the states in which it maintained a major installation. These studies were written in everyday language and designed to educate Air Force people in their rights and duties as members of the communities in which they serve. During the year the Air Force Preventive Law Program drew praise from the Chairman of the House Armed Services Subcommittee on Personnel, as well as the American Bar Association. The Department won the Emil Brown Preventive Law Award for 1975.

5. During the calendar year 1975, the Judge Advocate General's Department provided continuing legal and general education opportunities to 846 of its personnel. There are presently five resident courses being taught at the Judge Advocate General's School, Air University, Maxwell Air Force Base, Alabama. The basic course for new and recently assigned judge advocates was the Judge Advocate Staff Officer course. This six-week course was conducted five times during 1975 and 176 judge advocates completed it. The Staff Judge Advocate Course is for newly appointed staff judge advocates and was conducted once during 1975. Forty judge advocates attended this course. The Reserve and National Guard judge advocates attended a two week refresher course and 160 students graduated in 1975. An advance course for legal technicians was presented once during 1975 and forty senior NCO legal technicians attended. (The Department's enlisted personnel receive their training at a special legal technicians' school at Keesler AFB, Mississippi. Eight courses were held in 1975 and 119 students were graduated.) In 1975, 25 officers attended the one-week course for prosecuting attorneys and 25 additional officers attended the equal length course for defense attorneys held at Northwestern University. Forty judge advocates also attended the trial advocacy course held at Creighton University. Four general court-martial judges and eight special court-martial judges attended courses at the National College of State Trial Judges. This is a six-week course held at the University of Nevada, Reno, Nevada. Two of the special court-martial judges attended the two-week judges' seminar taught by the National Academy at the University of Colorado. During 1975, five newly assigned judge advocates spent their first year as a judge advocate at Air Material Areas (AMA) learning the full ramifications of Air Force procurement. This program is in addition to the regular and continuing two-week

procurement law course at Wright-Patterson Air Force Base. One hundred and five judge advocates completed this course during 1975. Fifteen judge advocates also attended the Army's basic procurement law course and five judge advocates attended the Army's advanced procurement law course. Also during 1975, the Judge Advocate General's Department instituted a patent law course for judge advocate and Air Force civilian attorneys who are involved in patent law problems. Twenty judge advocates and civilian attorneys attended this course. During the year, ten judge advocates were sent to various civilian universities to obtain an LLM degree. Three were pursuing a degree in labor law, four in procurement law, two in international law and one in environmental law.

In 1975 selected Air Force officers participated in the Funded Legal Education Program (FLEP) and the Excess Leave Program with 16 completing their law school requirements and designated as judge advocates. During the summer these FLEP and Excess Leave Program students performed active duty in Air Force legal offices as legal interns. Selected individuals are given the opportunity to perform their summer training at various divisions in the Office of The Judge Advocate General, Headquarters, USAF. Also, during 1975, the Judge Advocate General's Department education program was expanded to include seminar programs which utilize video tape presentations as a teaching aid. Topics covered by these seminars include the law of Federal labor management relations, professional responsibility, environmental law, trial advocacy and government contracts.

6. On December 31, 1975, there were 1,258 judge advocates on duty. This is an increase of 27 over calendar year 1974. The department has 91 colonels, 153 lieutenant colonels, 142 majors, and 872 captains assigned.

7. At the close of the period of this report, there were 55 commands exercising general court-martial jurisdiction.



## REPORT OF THE GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION (U.S. COAST GUARD)

**January 1, 1975 to December 31, 1975**

The following is the annual report of the General Counsel of the Department of Transportation submitted pursuant to Article 67(g) of the Uniform Code of Military Justice. Unless otherwise noted, the figures given are for the fiscal year beginning July 1, 1974, and ending June 30, 1975.

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during the fiscal year and the four preceding years.

	1975	1974	1973	1972	1971
General courts-martial .....	4	7	5	6	2
Special courts-martial .....	189	190	206	167	129
Summary courts-martial .....	267	212	307	348	287
Total .....	460	409	518	521	418

All special courts-martial had lawyers for defense counsel, and a non-lawyer trial counsel was used only once. A military judge was assigned in all of the trials. As has been noted in previous reports, a full-time judiciary for special courts-martial has not been established in the Coast Guard. Military judges are provided for special courts-martial by use of the two full-time general court-martial judges when available, and by the use of military judges assigned to other primary duties. Control over the detail of judges is centrally exercised, and all requirements have been filled in timely fashion. In 89 of the special courts-martial, trial was by military judge with members, one of which included enlisted members. In the remaining 100 cases, the defendant elected to be tried by military judge alone.

In 25 of the cases, the sentence included a bad conduct discharge. Ten of these were adjudged by military judge alone, and the remaining 15 were adjudged by a court with members. Of the 25, three were remitted or commuted by the convening authority, leaving 22 to reach the Court of Military Review.